

Advisory Opinion 2000-1

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION

As a former Montgomery County, Maryland employee, you have written to the Commission regarding your desire to enter into a contract to assist a potential offeror in preparing a proposal in response to a Request for Proposals (RFP) issued by the County on behalf of your former County agency. The Commission is treating the letter as a request for an advisory opinion.

Applicable Law

§19A-13 of the Montgomery County Code restricts the employment of a former county employee under either of two circumstances. First, there is a general one year ban with respect to any employment for any purpose by a county contractor under certain circumstances (the “1 Year Total Ban”). For one year after the effective date of his or her termination from County employment, a former public employee may not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee significantly participated in regulating the person or business or had official responsibility concerning a contract with the person or business (except a nondiscretionary contract with a regulated public utility). §19A-13(b).

Second, there is a ten year ban on any employment with regard to specified matters (the “10 Year Partial Ban”). A former county employee is prohibited from accepting employment or assisting any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee. §19A-13(a).

The Commission is authorized, however, to waive either of these prohibitions upon a written request and under certain circumstances. In particular, the Commission may grant a waiver of the prohibitions of subsection §19A-13 if it finds: (1) the waiver is needed to ensure that competent services to the County are timely and available; (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or (3) the proposed employment is not likely to create an actual conflict of interest. Furthermore, if the Commission determines that a waiver should be granted, the Commission may impose conditions appropriate to fulfil the purposes of the Ethics Law, and the Commission must disclose to the public any waiver that it grants.

Pertinent Facts

According to your memorandum, a copy of which is attached and incorporated herein, the pertinent facts are as follows:

- (1) From 1985 to 1994, you were employed as the Health Program Director for Montgomery County Health Department-outpatient Addiction Services, worked collaboratively to set up the Methadone to Abstinence Program (MTA). The program was operated by your agency, not by a contractor.
- (2) In 1994, after you and the program moved to the new Montgomery County Department of Addiction Victim and Mental Health Services (AVMHS), you were promoted to Chief of Court Services. Your memorandum states, "Directing this activity ceased to be a *major* responsibility November 1994." (Emphasis added.) The Commission, therefore, understands that directing this activity continued to be among your responsibilities, *albeit* not a *major* responsibility.
- (3) In 1995, after AVMHS and MTA had been incorporated into the new Montgomery County Department of Health and Human Services (DHHS), you were promoted to the position of Manager of Addiction Services Coordination (ASC) of DHHS. Your memorandum is silent as to your continuing responsibility, if any, for MTA.
- (4) In August and September 1998, you assisted in developing plans for privatizing "the methadone services (no longer the MTA Program)." According to your memorandum, "Since that time [you] have taken no action or had any discussion regarding this contract. The final RFP went under a cover letter from John Boston and Mildred Holmes-Williams."
- (5) You remained the Manager of ASC until you left County Service on January 6, 1999.
- (6) On November 30, 1999, you spoke with Mr. Hardy Bennett, the current Manager of Outpatient Addiction Services "regarding similarities between the RFP [you] helped develop and RFP that is currently out." According to your memorandum:

Mr. Bennett stated that there were substantial changes in the scope and compensation sections. I was never credited with preparing even the first draft of the RFP document. Mr. Bennett informed me that several changes were made to the RFP long after I left County Service.

(7) Your memorandum also states:

My assessment is that my participation in this effort . . . will not provide any potential contractor an advantage in the selection process. I am committed to working as a consultant to develop the proposal for the privatization of these services and do not intend to become an employee of Montgomery Recovery Services. The model of treatment is considered [sic] different from those which I previously proposed, managed, or provided.

According to the December 7, 1999, memoranda of Mr. Bennett, you were the author of the early drafts of this RFP, and the time period of your work on this RFP was from September, 1998, through January, 1999.

More recently, Mr. Bennett advised the Commission:

When I compare Methadone Maintenance RFP Document Draft #4 and the current Methadone Maintenance RFP Document my findings are as follows:

1. The Background/Intent is substantially the same.
2. The Work Statement/Specifications are substantially the same.
3. Contractor Qualifications are substantially the same.
4. Contractor Responsibility is substantially the same.
5. Contractor Qualifications are substantially the same.
6. Performance Measures are not in RFP document, but are listed in the latest RFP version.

The remainder of the two documents appear to be boiler plate for the most part. January 6, 2000 memorandum from Hardy Bennett to Barbara McNally.

Finally, in her January 5, 2000, memorandum to the Commission, Ms. Williams said:

. indicated in his letter to the commission . . . that he was never credited with preparing the first draft of the RFP document. Contrary, did prepare the first “Methadone Maintenance Treatment Services” draft, as indicated on the cover sheet of enclosure 1 (. was enlisted as the contact person regarding technical aspects of the document.) Also, was instrumental in setting up and implement the county’s Methadone to Abstinence program. Though changes in format and wording may have changed between the attached draft and the November 19, 1999 RFP that left [the Office of P]rocurement, we believe that significant portions of work product remain in the RFP.

Conclusion & Advice

Clearly, it would be contrary to fundamental principles articulate in both the Ethics Law and the Procurement Law to permit one who significantly participated in the drafting of a Request for Proposals (RFP) to leave the County's employ and assist a business that is preparing a proposal in response to that RFP. An RFP is a critical element in the competitive procurement of goods and services by the County. A county employee who significantly participates in drafting and RFP significantly participates in the procurement, and, therefore, after leaving County employment, is prohibited by §19A-13(a) of the Ethics Law from accepting employment with or assisting any party, other than a County agency, in that specific procurement for 10 years after the last date he or she significantly participated in the matter as a public employee.

Based on the correspondence in the file, the Commission concludes that you substantially participated in the preparation of the Methadone Maintenance RFP, and, therefore, advises that you may not be employed by or otherwise assists any entity in the preparation of an offer in response to that RFP.

[signed]
Kenneth C. Jackson, Sr.
Chairman

February 1, 2000